

FILED IN THE
SUPREME COURT

APR 27 2016

DATE FILED: April 28, 2016

<p>SUPREME COURT, STATE OF COLORADO</p> <p>2 East 14th Avenue Denver, CO 80203</p>	<p>OF THE STATE OF COLORADO Christopher T. Ryan, Clerk</p>
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	<p>▲ COURT USE ONLY ▲</p>
<p>In the Matter of the Title, Ballot Title and Submission Clause for Proposed Initiative 2015- 2016 #118</p> <p>Petitioner NATALIE MENTEN</p> <p>v.</p> <p>Respondents DAN RITCHIE and ALBERT YATES</p> <p>and</p> <p>the Title Board</p>	<p>Case No. <u>16SA140</u></p>
<p>Attorney for Petitioner</p> <p>Rebecca R. Sopkin, #20998 2945 Parfet Drive Lakewood, CO 80215 Phone: (303)232-4184 Email: grsop@msn.com</p>	
<p>PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD FOR PROPOSED INITIATIVE 2015-2016 #118</p>	

PETITIONER, Natalie Menten, registered elector of the State of Colorado by and through her counsel, hereby respectfully petitions this Court pursuant to C.R.S. § 1-40-107(2), to review the action of the Title Setting Board with respect to the Title, Ballot Title and Submission Clause set for Proposed Initiative 2015-2016 #118 (“Proposed Initiative #118”). As grounds therefore she states as follows:

STATEMENT OF THE CASE

A. Procedural History of Proposed Initiative #118

Dan Ritchie and Albert Yates, hereinafter “the Proponents,” proposed Initiative #118. It should be noted that Proposed Initiative #118 is similar to, but different in significant details from, Proposed Initiatives #116 and #117, which have also been proposed by the Proponents. Review and comment hearings were heard before representatives of the Office of Legislative Council and the Legislative Legal Services. Thereafter, the Proponents submitted final versions of Proposed Initiative #118 to the Secretary of State for the purpose of submission to the Title Board.

A Title Board hearing was held on April 6, 2016, to establish whether the Proposed Initiative contained only a single subject and to set its titles and submission clause. On April 13, 2016, Petitioner filed a Motion for Rehearing, alleging that the Proposed Initiative violated the Colorado Constitution, art. V, sec. 1(5.5), also known as the “Single Subject Rule,” and that and the title set was misleading and prejudicial. On April 20, 2016, a rehearing was held, wherein the Title Board granted the Motion for Rehearing only with respect to certain revisions made to the titles and submission clause and otherwise denied the Motion.

B. Jurisdiction

Petitioner is entitled to a review before the Colorado Supreme Court pursuant to C.R.S. § 1-40-107(2). Petitioner timely filed the Motion for Rehearing with the Title Board. C.R.S. § 1-40-107(1). Additionally,

Petitioner timely filed this Petition for Review within five days from the date of the hearing on the Motion for Rehearing. C.R.S. § 1-40-107(2).

As required by C.R.S. § 1-40-107(2), attached to this Petition for Review are certified copies of: (1) of Proposed Initiative #118 text, titles and submission clauses; (2) the Motion for Rehearing filed by the Petitioner; and (3) the rulings on the Motion for Rehearing by the Title Board. Petitioner believes that the Title Board erred in denying certain aspects of the Motions for Rehearing. Consequently, this matter is properly before this Court.

GROUND S FOR APPEAL

Contrary to the requirements of the Colorado Constitution, art. V, sec. 1(5.5), Proposed Initiative #118 contains multiple subjects. In addition, in violation of C.R.S. §§ 1-40-106, -107, the title set by the Title Board is unfair, misleading and does not fairly and correctly express the true meaning of the Proposed Initiative #118. The following is an advisory list of issues to be addressed in Petitioner's brief:

1. Proposed Initiative #118 provides for revenues retained by the state to be used to fund both public schools and transportation projects. These are very different subjects which are not in any way necessarily or properly connected with each other and therefore the Initiative does not meet the Single Subject Rule.
2. As approved by the titles for Proposed Initiative #118 do not reflect in any way the priority given to public schools and transportation projects in the use of the funds retained, and therefore the titles are misleading and do not fully express the true effect of the Proposed Initiative #118.

**PRAYER FOR
RELIEF**

Petitioner respectfully requests that, after consideration of the parties' briefs, this Court determine that the Title Board lacked jurisdiction to set title as the Proposed Initiative #118 violates the Single Subject Rule, and therefore title setting must be denied. Alternatively, Petitioner requests that the Court determine that the title as set is confusing, misleading, and not clearly reflective of the subject of the Proposed Initiative and thus remand the Initiative to the Title Board with instructions to redraft to the title to accurately and clearly represent the text of the Proposed Initiative.

Respectfully submitted this 27th day of April, 2016.



Rebecca R. Sopkin, #20998
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CERTIFICATE OF SERVICE

This is to certify that on April 27, 2016, a true and correct copy of the foregoing **PETITION FOR REVIEW OF FINAL ACTION OF BALLOT TITLE SETTING BOARD FOR PROPOSED INITIATIVE 2015-2016 #118** was sent, via first class U.S. mail, postage pre-paid, to the proponents and their counsel at:

Dee P. Wisor
Butler Snow LLP
1801 California Street, Suite 5100
Denver, CO 80202

LeeAnn Morrill
Office of the Attorney General
1300 Broadway, 6th Floor
Denver, CO 80203





STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **WAYNE W. WILLIAMS**, Secretary of State of the State of Colorado, do hereby certify that:

the attached are true and exact copies of the filed text, motions for rehearing, and the rulings thereon of the Title Board for Proposed Initiative "2015-2016 #118 'Retention of Excess State Revenue'".....

..... **IN TESTIMONY WHEREOF** I have unto set my hand

and affixed the Great Seal of the State of Colorado, at the
City of Denver this 25th day of April, 2016.

Wayne W. Williams

SECRETARY OF STATE



RECEIVED

MAR 24 2016

S. WARD
12:25 P.M.

Retention of Surplus Revenues

Colorado Secretary of State

Be it enacted by the People of the State of Colorado:

SECTION 1. Article 77 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

§ 24-77-103.6.5. Retention of 2016 election excess state revenues – 2016 election general fund exempt account - required uses - 2016 election excess state revenues legislative report

(1)(a) Notwithstanding any provision of law to the contrary and without increasing tax rates or imposing new taxes, for each fiscal year commencing on or after July 1, 2016, but before July 1, 2026, the state shall be authorized to retain and spend all state revenues in excess of the sum of the limitation on state fiscal year spending plus 2005 election excess state revenues.

(b) Notwithstanding any provision of law to the contrary and without increasing tax rates or imposing new taxes, for each fiscal year commencing on or after July 1, 2026, the state shall be authorized to retain and spend all state revenues that are in excess of the sum of the limitation on state fiscal year spending plus 2005 election excess state revenues, but less than the 2016 election excess state revenues cap for the given fiscal year.

(2) There is hereby created in the general fund the 2016 election general fund exempt account, which shall consist of the 2016 election excess state revenues that the state retains for a given fiscal year pursuant to this section. The moneys in the account shall be appropriated or transferred for any purposes determined by the general assembly, including, but not limited to, for public schools, transportation projects, and for other priorities.

(3) The statutory limitation on general fund appropriations set forth in section 24-75-201.1(1) (a), and the exceptions or exclusions thereto, shall apply to the moneys in the 2016 election general fund exempt account.

(4) As permitted by the Taxpayer's Bill of Rights, the approval of this section by the registered electors of the state voting on the issue at the November 2016 statewide election constitutes a voter-approved revenue change to allow the retention and expenditure of state revenues in excess of the limitation on state fiscal year spending.

(5)(a) For each fiscal year that the state retains and spends state revenues in excess of the limitation on state fiscal year spending pursuant to this section, the director of research of the legislative council shall prepare a 2016 election excess state revenues legislative report that includes the following information:

(I) The amount of 2016 election excess state revenues that the state retained pursuant to this section; and

(II) A description of how the 2016 election excess state revenues that the state retained pursuant

to this section were expended.

(b) The report required by this subsection (5) shall be completed by October 15 following a fiscal year that the state retains and spends revenues pursuant to this section and may be amended thereafter as necessary. The director of research shall publish and link to the official web site of the general assembly a copy of the report.

(6) As used in this section:

(a) "2005 election excess state revenues" means those state revenues in excess of the limitation of state fiscal year spending that the state is authorized to retain and spend pursuant to 24-77-103.6.

(b) "2016 election excess state revenues" means state revenues that are in excess of the sum of the limitation on state fiscal year spending plus 2005 election excess state revenues

(c)(I) "2016 election excess state revenues cap" for a given fiscal year means an amount that is equal to the highest total state revenues for a fiscal year from the period of the 2016-17 fiscal year through the 2025-26 fiscal year, adjusted each subsequent fiscal year for inflation, the percentage change in state population, the qualification or disqualification of enterprises, and debt service changes.

(II) As used in this paragraph (c), inflation and the percentage change in state population shall be the same rates that are used in calculating the maximum annual percentage change in state fiscal year spending pursuant to section 24-77-103, and the qualification or disqualification of an enterprise or debt service changes shall change the 2016 election excess state revenues cap in the same manner as such change affects the limitation on state fiscal year spending.

(d) "State revenues" means state revenues not excluded from state fiscal year spending, as defined in section 24-77-102(17).

RECEIVED

S.W.R.D

MAR 24 2016

12:25 P.M.

Colorado Secretary of State

Retention of Surplus Revenues 2015-16 #118. As amended in response to review and comment.

Be it enacted by the People of the State of Colorado:

SECTION 1. Article 77 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

~~§ 24-77-103.6-5-103.1~~ Retention of 2016 election excess state revenues – 2016 election general fund exempt account - required uses - 2016 election excess state revenues legislative report

(1)(a) Notwithstanding any provision of law to the contrary and without increasing tax rates or imposing new taxes, for each fiscal year commencing on or after July 1, 2016, but before July 1, 2026, the state ~~shall be~~ authorized to retain and spend all state revenues in excess of the ~~sum of the~~ limitation on state fiscal year spending ~~plus 2005 election excess state revenues~~.

(b) Notwithstanding any provision of law to the contrary and without increasing tax rates or imposing new taxes, for each fiscal year commencing on or after July 1, 2026, the state ~~shall be~~ authorized to retain and spend all state revenues that are in excess of the ~~sum of the~~ limitation on state fiscal year spending ~~plus 2005 election excess state revenues~~, but less than the 2016 election excess state revenues cap for the given fiscal year.

(2) There is hereby created in the general fund the 2016 election general fund exempt account, which shall consist of the 2016 election excess state revenues that the state retains for a given fiscal year pursuant to this section. The moneys in the account shall be appropriated or transferred for any purposes determined by the general assembly, including, but not limited to, for public schools, transportation projects, and for other priorities.

(3) The statutory limitation on general fund appropriations set forth in section 24-75-201.1(1) (a), and the exceptions or exclusions thereto, shall apply to the ~~appropriation of~~ moneys in the 2016 election general fund exempt account.

(4) As permitted by the Taxpayer's Bill of Rights, the approval of this section by the registered electors of the state voting on the issue at the November 2016 statewide election constitutes a voter-approved revenue change to allow the retention and expenditure of state revenues in excess of the limitation on state fiscal year spending.

(5)(a) For each fiscal year that the state retains and spends state revenues in excess of the limitation on state fiscal year spending pursuant to this section, the director of research of the legislative council shall prepare a 2016 election excess state revenues legislative report that includes the following information:

(I) The amount of 2016 election excess state revenues that the state retained pursuant to this section; and

(II) A description of how the 2016 election excess state revenues that the state retained pursuant to this section were expended.

(b) The report required by this subsection (5) shall be completed by October 15 following a fiscal year that the state retains and spends revenues pursuant to this section and may be amended thereafter as necessary. The director of research shall publish and link to the official ~~web-site~~ website of the general assembly a copy of the report.

(6) As used in this section:

~~(a) "2005 election excess state revenues" means those state revenues in excess of the limitation of state fiscal year spending that the state is authorized to retain and spend pursuant to 24-77-103.6.~~ (b) "2016 election excess state revenues" means state revenues that are in excess of the sum of the limitation on state fiscal year spending plus 2005 election excess state revenues.

~~(e)~~(b)(I) "2016 election excess state revenues cap" for a given fiscal year means an amount that is equal to the highest total state revenues for a fiscal year from the period of the 2016-17 fiscal year through the 2025-26 fiscal year, adjusted each subsequent fiscal year for inflation, the percentage change in state population, the qualification or disqualification of enterprises, and debt service changes.

(II) As used in this paragraph (c), inflation and the percentage change in state population shall be the same rates that are used in calculating the maximum annual percentage change in state fiscal year spending pursuant to section 24-77-103, and the qualification or disqualification of an enterprise or debt service changes shall change the 2016 election excess state revenues cap in the same manner as such change affects the limitation on state fiscal year spending.

~~(d)~~(c) "State revenues" means state revenues not excluded from state fiscal year spending, as defined in section 24-77-102(17).

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Format changed	0
Total changes	24

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MAR 24 2016

S. WARD
12:25 P.M.

2015-16 #118. Final version filed with Secretary of State.

Colorado Secretary of State

Be it enacted by the People of the State of Colorado:

SECTION 1. Article 77 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

§ 24-77-103.1. Retention of 2016 election excess state revenues – 2016 election general fund exempt account - required uses - 2016 election excess state revenues legislative report

(1)(a) Notwithstanding any provision of law to the contrary and without increasing tax rates or imposing new taxes, for each fiscal year commencing on or after July 1, 2016, but before July 1, 2026, the state is authorized to retain and spend all state revenues in excess of the limitation on state fiscal year spending.

(b) Notwithstanding any provision of law to the contrary and without increasing tax rates or imposing new taxes, for each fiscal year commencing on or after July 1, 2026, the state is authorized to retain and spend all state revenues that are in excess of the limitation on state fiscal year spending, but less than the 2016 election excess state revenues cap for the given fiscal year.

(2) There is hereby created in the general fund the 2016 election general fund exempt account, which shall consist of the 2016 election excess state revenues that the state retains for a given fiscal year pursuant to this section. The moneys in the account shall be appropriated or transferred for any purposes determined by the general assembly, including, but not limited to, for public schools, transportation projects, and for other priorities.

(3) The statutory limitation on general fund appropriations set forth in section 24-75-201.1(1) (a), and the exceptions or exclusions thereto, shall apply to the appropriation of moneys in the 2016 election general fund exempt account.

(4) As permitted by the Taxpayer's Bill of Rights, the approval of this section by the registered electors of the state voting on the issue at the November 2016 statewide election constitutes a voter-approved revenue change to allow the retention and expenditure of state revenues in excess of the limitation on state fiscal year spending.

(5)(a) For each fiscal year that the state retains and spends state revenues in excess of the limitation on state fiscal year spending pursuant to this section, the director of research of the legislative council shall prepare a 2016 election excess state revenues legislative report that includes the following information:

(I) The amount of 2016 election excess state revenues that the state retained pursuant to this section; and

(II) A description of how the 2016 election excess state revenues that the state retained pursuant to this section were expended.

(b) The report required by this subsection (5) shall be completed by October 15 following a fiscal year that the state retains and spends revenues pursuant to this section and may be amended thereafter as necessary. The director of research shall publish and link to the official website of the general assembly a copy of the report.

(6) As used in this section:

(a) "2016 election excess state revenues" means state revenues that are in excess of the limitation on state fiscal year spending.

(b)(I) "2016 election excess state revenues cap" for a given fiscal year means an amount that is equal to the highest total state revenues for a fiscal year from the period of the 2016-17 fiscal year through the 2025-26 fiscal year, adjusted each subsequent fiscal year for inflation, the percentage change in state population, the qualification or disqualification of enterprises, and debt service changes.

(II) As used in this paragraph (c), inflation and the percentage change in state population shall be the same rates that are used in calculating the maximum annual percentage change in state fiscal year spending pursuant to section 24-77-103, and the qualification or disqualification of an enterprise or debt service changes shall change the 2016 election excess state revenues cap in the same manner as such change affects the limitation on state fiscal year spending.

(c) "State revenues" means state revenues not excluded from state fiscal year spending, as defined in section 24-77-102(17).

Ballot Title Setting Board

Proposed Initiative 2015-2016 #118¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes authorizing the state to retain and spend state revenues that exceed the constitutional limitation on state fiscal year spending, and, in connection therewith, authorizing the state to retain and spend all such revenues collected during the ten fiscal years from July 1, 2016 through June 30, 2025, and authorizing the state to annually retain and spend such revenues for any subsequent fiscal year in an amount equal to the highest amount collected in any single fiscal year during the ten-year period adjusted for increases in state population and inflation.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes authorizing the state to retain and spend state revenues that exceed the constitutional limitation on state fiscal year spending, and, in connection therewith, authorizing the state to retain and spend all such revenues collected during the ten fiscal years from July 1, 2016 through June 30, 2025, and authorizing the state to annually retain and spend such revenues for any subsequent fiscal year in an amount equal to the highest amount collected in any single fiscal year during the ten-year period adjusted for increases in state population and inflation?

*Hearing April 6, 2016:
Single subject approved; staff draft amended; titles set.
Hearing adjourned 4:30 p.m.*

¹ Unofficially captioned “**Retention of Excess State Revenue**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.

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APR 07 2016

S. WARD
2:29 P.M.

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

IN THE MATTER OF THE TITLE AND BALLOT TITLE AND SUBMISSION CLAUSE
FOR INITIATIVE 2015-2016 #118

MOTION FOR REHEARING

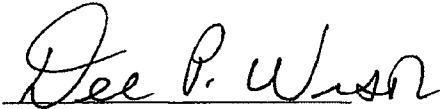
On behalf of Dan Ritchie and Al Yates, registered electors of the State of Colorado and designated representatives of Proposed Ballot Initiative 2015-2016 #118 ("the Proponents"), the undersigned counsel hereby submits this Motion for Rehearing on Initiative #118, and as grounds therefore states as follows:

The Title Does Not Fairly Describe the Meaning and Intent of the Measure

The measure provides that the ten year period during which the State may retain and collect all revenues above the constitutional limitation on fiscal year spending "for each fiscal year commencing on or after on July 1, 2016, but before July 1, 2026." The title and submission clause set by the Title Board provide that the ten year period ends on June 30, 2025. This should say June 30, 2026.

Accordingly, the Proponents respectfully request that this Motion for Rehearing be granted and that a proper title be set at a hearing held pursuant to C.R.S. § 1-40-107(1).

Respectfully submitted this 7th day of April, 2016.



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APR 13 2016

S. WARD
4:40 P.M.

COLORADO TITLE SETTING BOARD

Colorado Secretary of State

THE MATTER OF THE TITLE AND BALLOT TITLE SUBMISSION CLAUSE FOR INITIATIVE 2015-2016 #118

MOTION FOR REHEARING

Natalie Menten, a registered elector of the State of Colorado, through undersigned counsel, hereby submits this Motion for Rehearing on Initiative #118 and objects to the Title Board's title and ballot title and submission clause set for Initiative 2015-2016 #118 ("Initiative 118") as Initiative 118 does not comply with the Single Subject rule and title set is misleading and prejudicial. As grounds therefore she states as follows:

A. The Title Board set a title for Initiative 2015-2016 #118 on April 6, 2016.

At the hearing on the proposed Initiative 118, the Board designated and fixed the following ballot title and submission clause:

Shall there be a change to the Colorado Revised Statutes authorizing the state to retain and spend state revenues that exceed the constitutional limitation on state fiscal year spending, and, in connection therewith, authorizing the state to retain and spend all such revenues collected during the ten fiscal years from July 1, 2016 through June 30, 2025, and authorizing the state to annually retain and spend such revenues for any subsequent fiscal year in an amount equal to the highest amount collected in any single fiscal year during the ten-year period adjusted for increases in state population and inflation?

B. The Title set for Initiative 118 is misleading and prejudicial, contrary to C.R.S. § 1-40-106

1. The title set for Initiative 118 differs from those set for Initiatives 116 and 117 in that it does not specify for which purposes the revenues collected will be expended.

2. However, the statutory language proposed by Initiative 118 does in fact state that "[t]he moneys in the account shall be appropriated or transferred for any purposes determined by the general assembly, including, but not limited to, for public schools, transportation projects, and for other priorities." Proposed C.R.S. § 24-77-103.1.

3. The clear meaning of this language is that the funds are to be used for public schools and transportation projects. The "but not limited to" clause opens the funds up for other possible uses, but the word "including" necessitates that at least some of the funds be used for those purposes.

4. This reading is buttressed by Colorado law. The sentence is included in the proposed statute and therefore cannot be deemed meaningless. Colorado statute specifically provides that "[i]n enacting a statute is presumed that . . . [t]he entire statute is intended to be effective." C.R.S. § 2-4-201(1)(b). Furthermore, Colorado case law affirms the statutory interpretation maxim that we are not to presume that language was used idly. Colorado Ground Water Comm'n v. Eagle Park Farms, Ltd., 919 P.2d 212,218 (Colo. 1996)(quoting *McMillin v. Colorado*, 158 Colo. 183, 188, 405 P.2d 672, 674 (1965)). Any other interpretation of the sentence would render it completely meaningless.

5. However, this prioritization of certain special interests is not mentioned in the proposed title and both petition signers and voters will have no idea that it is contained in the proposed statute and therefore the title will be misleading and confusing to potential petition signers and to voters.

WHEREFORE, the titles set April 6, 2016 should be reversed, due to their misleading and prejudicial nature addressed herein, or modified to account for the legal insufficiencies highlighted in this Motion for Rehearing.

RESPECTFULLY SUBMITTED this 13th day of April, 2016.



Natalie Menten
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Rebecca R. Sopkin, #20998
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CERTIFICATE OF SERVICE

This is to certify that on April 13, 2016, a true and correct copy of the foregoing **MOTION FOR REHEARING** was sent, via first class U.S. mail, postage pre-paid, to the proponents through their counsel at:

Dee P. Wisor
Butler Snow LLP
1801 California Street, Suite 5100
Denver, CO 80202

J. Meiten

Ballot Title Setting Board

Proposed Initiative 2015-2016 #118¹

The title as designated and fixed by the Board is as follows:

A change to the Colorado Revised Statutes authorizing the state to retain and spend state revenues that exceed the constitutional limitation on state fiscal year spending, and, in connection therewith, authorizing the state to retain and spend all such revenues collected during the ten fiscal years from July 1, 2016 through June 30, 2026, and authorizing the state to annually retain and spend such revenues for any subsequent fiscal year in an amount equal to the highest amount collected in any single fiscal year during the ten-year period adjusted for increases in state population and inflation.

The ballot title and submission clause as designated and fixed by the Board is as follows:

Shall there be a change to the Colorado Revised Statutes authorizing the state to retain and spend state revenues that exceed the constitutional limitation on state fiscal year spending, and, in connection therewith, authorizing the state to retain and spend all such revenues collected during the ten fiscal years from July 1, 2016 through June 30, 2026, and authorizing the state to annually retain and spend such revenues for any subsequent fiscal year in an amount equal to the highest amount collected in any single fiscal year during the ten-year period adjusted for increases in state population and inflation?

Hearing April 6, 2016:

Single subject approved; staff draft amended; titles set.

Hearing adjourned 4:30 p.m.

Rehearing April 20, 2016:

Motion for Rehearing filed by proponents granted.

Motion for Rehearing filed by Menten granted only to the extent that the Board made changes to the titles; denied in all other respects.

Hearing adjourned 11:15 a.m.

¹ Unofficially captioned “**Retention of Excess State Revenue**” by legislative staff for tracking purposes. This caption is not part of the titles set by the Board.